IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 155 OF 2005
IN
SUIT NO. 64 OF 2005.

Simplex Building Co-op. Housing
Society Ltd. ... Plaiantiff.

V/s.

Anil Shanker Naik & others. ... Defendants.

S.N.Vaishnawa i/b. M/s.N.N.Vaishnawa & Co.
for the plaintiff.

Ms.Simmi Chhabra i/b. A.S.Desai
for defendant No.1.

None for defendant Nos.2 and 3.

Raja Ghadge for defendant Nos.4 to 5
to show cause.

CORAM: V.C.DAGA, J.

DATED: 1st February 2006.

P.C.:

. This suit is filed by the plaintiff-co-operative housing society to seek declaration that defendant Nos.1 to 5 have no right, title or interest of any nature whatsoever in the suit premises i.e. flat No.C-23, located on the 2nd floor of the society building, Simplex Building situated at 38/40, Pawwala Street, Bombay- 400 004.

2. The plaintiff is also seeking possession of the suit property with the prayer that it

should be handed over to defendant No.6- the Administrator General, High Court, Bombay so as to protect and preserve the suit property.

3. The factual narration incorporated in the plaint depicts that as per the record of the society one Smt.Parvatibai M. Kodkarnikar was member of the society. Being a member of the society she came in possession of the suit flat. She expired on 10th June, 2001 without making any nomination in respect of the suit flat.

4. According to the plaintiff- Society, after the death of Smt.Parvatibai, defendant No.3- Mrs. Ayesha M. Sayed; wife of Ex-Secretary of the Society; took forcible possession of the suit flat and put present defendant Nos.4 and 5 in possession of the suit premises.

5. The plaintiff- Society claims to have given a public notice in the newspapers viz; "Free Press Journal" of and "Navshakti" both dated 28th June, 2003 inviting claims of the claimants, if any, in respect of the suit premises as per rule 25(3) of the Maharashtra Co-operative Societies Act, 1960.

6. The plaintiff- Society claims that they have received claims from defendant Nos.1 and 2 claiming to be the legal heirs of late Smt.Parvatibai.

7. The plaintiff states that it is not possible for the society to decide the rival claims set up by defendant Nos.1 and 2. In that view of the matter, plaintiff- society was required to file this suit with a prayer for evicting defendant Nos.4 and 5 from the suit premises with further prayer to hand over possession thereof to defendant No.6- Administrator General so as to protect and preserve the property with further liberty to it to deal with with the claims of defendant Nos.1 and 2 in accordance with law.

8. The plaintiff- Society by present notice of motion is also seeking interim direction that defendant No.6 be appointed as Administrator of the suit property with further interim direction to take over possession of the suit property from defendant Nos.4 and 5 or any one whosoever may in possession of the same.

9. Nobody appears on behalf of defendant Nos.2 and 3. Ms.Simmi Chhabra holding for Mr.A.S.Desai for defendant No.1 appeared and sought adjournment on the ground that the Advocate who is supposed to appear in this case is not available because of his personal difficulty. Prayer made for adjournment is rejected for want of sufficient cause.

10. Learned counsel appearing for defendant Nos.4 and 5 submits that they are in possession of the suit premises as a licensee of late Smt.Parvatibai since December, 1999. However, there is no material on record to show that defendant Nos.4 and 5 came in possession of the suit premises during lifetime of late Smt.Parvatibai. In that view of the matter, prima facie case sought to be made out in para-3 of the plaint deserves acceptance.

11. In the above view of the matter, prima facie; defendant Nos.4 and 5 have no right to continue in the suit premises. However, without going into the issue as to who will be entitled to continue to possess the suit property, defendant No.6 is appointed as Administrator of the suit property.

12. The defendant No.6 shall take notional possession of the suit premises. After taking symbolic possession of the suit property; he shall take proper steps to protect the same and shall deal with the property in accordance with law under intimation to this Court. So far as the continuance of possession of defendant Nos.4 and 5 is concerned, it would be open for them to lodge their respective claims before the Administrator who shall decide the claims in accordance with law. It would be open for defendant No.6-Administrator either to allow defendant Nos.4 and 5 to continue in possession of suit premises or any other fit person, subject to fixing the amount of royalty; out of which he shall be entitled to discharge the liability of the plaintiff-Society vis-a-vis suit property considering the claim of the Society as per their rules and regulations.

Order accordingly.

13. Notice of motion is made absolute in terms of this order with no order as to costs.

(V.C.DAGA, J.)